

Second Regular Session 112th General Assembly (2002)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

HOUSE ENROLLED ACT No. 1104

AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 3-13-9-4 IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2002]: Sec. 4. (a) A vacancy in the town council:

- (1) not covered by section 1 of this chapter; or
- (2) covered by section 1 of this chapter, but existing after the thirtieth day after the vacancy occurs;

shall be filled by the remaining members of the council at a regular or special meeting.

(b) The town clerk-treasurer shall give notice of the meeting. ~~which~~
Except as provided in subsection (d) or (e), the meeting shall be held:

- (1) within thirty (30) days after the vacancy occurs if the vacancy is not covered by section 1 of this chapter; or
- (2) within sixty (60) days after the vacancy occurs if the vacancy **is covered by section 1 of this chapter and** exists for more than thirty (30) days.

(c) The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

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(d) Notwithstanding subsection (b), if a vacancy:

(1) is not covered by section 1 of this chapter; and

(2) exists because a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(4);

the town council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the town council determines that a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(4).

(e) Notwithstanding subsection (b), if a vacancy:

(1) is covered by section 1 of this chapter;

(2) exists because a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(4); and

(3) exists for more than thirty (30) days;

the council shall meet and select an individual to fill the vacancy not later than sixty (60) days after the town council determines that a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(4).

SECTION 2. IC 3-13-11-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 3. (a) Except as provided in subsection (b) **and section 3.5 of this chapter**, not later than ten (10) days after a vacancy occurs in an office subject to this chapter, the county chairman:

(1) of the county in which the greatest percentage of the population of the election district of the office is located; and

(2) of the same political party that elected or selected the official who vacated the office;

shall give notice of a caucus to all eligible precinct committeemen.

(b) A county chairman may give notice of a caucus before the time specified under subsection (a) if a vacancy will exist because the official has:

(1) submitted a written resignation under IC 5-8-3.5; or

(2) been elected to another office.

(c) Notwithstanding IC 5-8-4, a person may not withdraw the person's resignation after the resignation has been accepted by the person authorized to accept the resignation less than seventy-two (72) hours before the announced starting time of a caucus under this section.

(d) **Except as provided in section 3.5 of this chapter**, a caucus under this section shall be held after giving notice to caucus members under section 4 of this chapter and not later than thirty (30) days after the vacancy occurs.

SECTION 3. IC 3-13-11-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1, 2002]: Sec. 3.5. (a) If a vacancy exists on a town council because a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(4), the caucus shall meet and select an individual to fill the vacancy not later than thirty (30) days after the county chairman receives a notice of the vacancy under IC 5-8-5. If the vacancy is due to the death of a town council member, and the county chairman is aware of the member's death before receiving a notice of the death, the caucus may meet before the county chairman receives the notice of the death.

(b) The county chairman shall:

- (1) give notice of the caucus meeting to caucus members under section 4 of this chapter; and
- (2) keep the notice of the vacancy with the records of the caucus.

SECTION 4. IC 5-8-5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]:

Chapter 5. Notice of a Town Council Vacancy

Sec. 1. This chapter applies when a vacancy must be filled under:

- (1) IC 3-13-9; or
- (2) IC 3-13-11;

due to a reason set forth in IC 36-5-2-6.5(2) through IC 36-5-2-6.5(4).

Sec. 2. As used in this chapter, "member" refers to a town council member.

Sec. 3. (a) The town council may hold a public meeting to determine whether a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(4) that results in a vacancy on the town council. The town council may set a meeting for making the determination on its own motion, or a person may petition the town council to set a meeting to make the determination. The town council may grant or deny a petition for a meeting.

(b) If a person files a petition with the council, the petition must state the basis for the person's claim that a circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(4).

Sec. 4. (a) If the town council is reasonably satisfied that any circumstance has occurred under IC 36-5-2-6.5(2) through IC 36-5-2-6.5(4), the council may, by an affirmative vote of a majority of the members appointed to the body, vote to declare a vacancy in the town council membership. The member who is



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alleged to have vacated the member's seat may participate in the meeting as a member, but may not vote on the issue.

(b) If the member who is the subject of the petition or motion does not attend the meeting at which the town council makes the determination that a vacancy exists, the town council shall mail notice of its determination to the member.

(c) If the town council determines that a vacancy exists, the town clerk-treasurer shall give the circuit court clerk notice of the determination not later than five (5) days after the date of the town council's determination. The circuit court clerk shall give notice to the county chairman if a caucus is required under IC 3-13-11 to fill the vacancy.

Sec. 5. The member whose seat is vacated may file an action under IC 34-17-1 with the circuit court of the county where the town is located.

SECTION 5. IC 36-5-2-6.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2002]: **Sec. 6.5.** A vacancy on the legislative body is created whenever any of the following circumstances occur:

- (1) A member resigns.
- (2) A member dies.
- (3) A member ceases to be a resident of the town or district as set forth in section 6 of this chapter.

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Approved: _____

Governor of the State of Indiana

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